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8 Attorneys for Plaintiff
9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) No. CR 08-01064-GAF
)
13 Plaintiff,) <u>GOVERNMENT'S POSITION RE:</u>
) <u>REVOCATION OF SUPERVISED RELEASE</u>
14 v.)
) DATE: April 18, 2011
15 MATTHEW MARTIN,) TIME: 1:30 p.m.
) PLACE: Courtroom of the
16 Defendant.) Honorable Judge Gary A. Feess
)

17

18 Plaintiff, United States of America, through its attorney of
19 record, the United States Attorney's Office for the Central
20 District of California, hereby files the Government's Position
21 Re: Revocation of Supervised Release.

22 I.

23 INTRODUCTION

24 The government agrees with defendant that the Court is not
25 required to impose a consecutive term of imprisonment for the
26 unserved period of community confinement under U.S.S.G.
27 § 7B1.3(d) because this section of the guidelines is advisory,
28

1 not mandatory. Nevertheless, the government recommends the Court
2 revoke supervised release and impose an appropriate term of
3 incarceration as a consequence for defendant's repeated conduct
4 in violation of the terms of supervised release. The government
5 has no objection to defendant's request that he be evaluated for
6 participation in the Substance Abuse Treatment and Reentry
7 ("STAR") program, provided the Court place defendant on a term of
8 supervised release of 30 months from the date of revocation.

9 **II.**

10 **FACTS**

11 On July 13, 2009, defendant was sentenced to time served and
12 placed on supervised release for a period of three years,
13 including a condition that he participate for a period of six
14 months in a home detention program, participate in an outpatient
15 substance abuse treatment and counseling program, and submit to
16 drug testing, among other conditions. In August 2009, defendant
17 used marijuana; however, the Court approved the probation
18 officer's recommendation that no formal action be taken. In
19 October 2009, the Court again approved the probation officer's
20 recommendation that no formal action be taken in response to
21 defendant's continued use of marijuana in August 2009. In
22 January 2010, defendant was arrested for driving under the
23 influence of alcohol, for which he later sustained a misdemeanor
24 conviction. The Court approved the probation officer's
25 recommendation that no formal action be taken in response. In
26 September 2010, the Court modified defendant's supervised release
27 ///

1 to include participation in a residential reentry center for six
2 months.

3 The violation conduct consists of the following: On October
4 5, 2010 and November 18, 2010 defendant submitted urine specimens
5 which tested positive for marijuana. On four occasions in
6 November 2010, defendant failed to report for outpatient
7 substance abuse counseling. On February 3, 2010, defendant was
8 terminated from the residential reentry center for possessing
9 Damiana Leaf, a "marijuana like" substance, in violation of the
10 Bureau of Prisons' and the center's regulations.

11 In the past six months, defendant has tested positive for
12 marijuana on six occasions, failed to participate in substance
13 abuse treatment, failed to appear for random drug testing, and
14 was convicted for driving under the influence of alcohol.

15 **III.**

16 **RECOMMENDATION**

17 Due to defendant's repeated failures to take advantage of
18 the treatment options available to him under the current
19 conditions of supervised release, the probation office
20 recommended a custodial sentence. The government concurs that a
21 term of custody is necessary to impress upon defendant the
22 seriousness of the situation and the need to comply with the
23 terms of supervised release, given his repeated failures to date.
24 Section 7B1.3(d) requires imposition of any unserved period of
25 community confinement, which may be converted to an equivalent
26 period of imprisonment. Four months and five days of unserved
27 ///

1 community confinement remain to be imposed. However, this
2 section is advisory, not mandatory.

3 Defendant requests to be evaluated for participation in the
4 STAR program. The government agrees that evaluation for
5 participation in the STAR program would be beneficial. However,
6 the government requests that defendant be placed on supervised
7 release for a period of 30 months, as the currently remaining
8 term of supervised release is too short to allow for effective
9 participation in the STAR program.

10 **IV.**

11 **CONCLUSION**

12 The government recommends supervised release be revoked,
13 defendant be incarcerated for a short period commensurate with
14 the need to impress upon him the need to comply with the drug
15 treatment program, that supervised release be re-imposed for a
16 period of 30 months, and that defendant be evaluated for
17 participation in the STAR program.

18 Date: April 11, 2011, ANDRÉ BIROTTE JR.
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